IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

HANSRAJ V/S RAJKUMARI

S.B.CIVIL SECOND APPEAL No.166 of 2005

Date of Judgment : 05 October, 2007

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Mr. H.R. Soni and Mr. R.R.Nagori, for the appellant.
Mr. R.K. Thanvi, for the respondent.

BY THE COURT:

This second appeal has been filed by the defendant appellant tenant, against the decree of eviction passed by the learned lower Appellate Court, on the ground of reasonable and bonafide necessity of the plaintiff, and also by deciding the question of partial eviction, and comparative hardship in favour of the plaintiff. The suit was dismissed by the learned trial court.

The facts of the case are, that the plaintiff filed the present suit for eviction on 27.10.1995. The allegations are, that the house no. 6, B-Block, Sriganganagar adjacent to corner shop type Chhaper, which was let out by Chunnilal husband of Saroj Kumari to the

defendant in the year 1990 at a monthly rent of Rs. 1000/-, which rent was subsequently increased to Rs. 1100/-. The defendant paid rent to Chunnilal upto 31.3.1993. It is alleged that the said Chhaper exists on municipal land, which was taken on rent by Saroj Kumari, and Saroj Kumari sold the Malba of Chhaper to the plaintiff in the year 1993, and now it is recorded in the name of plaintiff, consequently Saroj is retaining no concern with this. Thus, there is relationship of landlord and the tenant between the plaintiff and the defendant. Then, it is alleged that Chhaper was taken on rent by the defendant from husband of Saroj, and in that regard the husband Chunnilal gave a registered notice dt. 30.7.1993 to the defendant, directing him to pay rent since 1.4.1993 onwards to the plaintiff. Likewise identical notice was given by the plaintiff to the defendant, both of which notices were received. Thus, also relationship of landlord and tenant is established. With this it is alleged, that the defendant has not paid the rent for 30 months, and has claimed eviction on the grounds mentioned in para-5 being default in payment of rent, and reasonable and bonafide necessity of the plaintiff, as the plaintiff's daughter in law Smt. Vinod Bakshi, who is M.A., M.Ed. qualified, and was working as teacher in Vivek Memorial Public School till 30.11.1994, requires the premises for establishing a computer coaching centre. This Vinod Bakshi is claimed to be living in the house no. 89, in the B-Block. Size of the premises was pleaded to be 12 x

20 ft. Then, the pleadings about the impartibility, and comparative hardship have been taken.

A written statement has been filed by the defendant on 22.5.1996, contesting the suit. Para-1 of the plaint was denied, and it was pleaded that the suit shop was taken on rent from Chunnilal at a rent of Rs. 1000/-, and he is continuing in tenancy. It was admitted that the shop existed on the land of Municipality. However, the fact of its purchase by the plaintiff in April, 1993 was denied, and it was pleaded that the shop was taken on rent from Chunnilal, and rent was being received by him only. It was also pleaded that the factum of purchase of shop by plaintiff is denied, and that plaintiff never made any demand of rent from the defendant. Then, replying para-3 it was pleaded that Chunnilal never gave any notice to the defendant about having sold the shop, nor any such notice was sent by the plaintiff. It was denied that the plaintiff is entitled to maintain the suit. Then, replying para-4 the plea of the rent @ Rs. 1100/- per month being in arrears from 1.4.1993 to 30.9.95 was denied. It was pleaded that the plaintiff never made demand of rent, nor gave any notice, and the plaintiff is not entitled to receive any rent from the defendant. Then, replying the grounds pleaded in para-5, the allegation of default was denied, pleading that the defendant has not committed any default. Denying the plea of bonafide necessity, the academic qualification

of the plaintiff's daughter in law was denied, and alternatively it was pleaded, that the qualification cannot be said to be appropriate for computer coaching. It was pleaded that the alleged requirement is only an excuse. The daughter in law has no experience of computer coaching. Then, in further alternative it was pleaded, that even if it is found that the plaintiff's daughter in law requires some space, then the plaintiff and his family has various other alternative accommodations, which can be used, details were detailed in para-5 (ख) of the written statement. Thus, the reasonable and bonafide necessity was denied, and pleading about partial eviction and comparative hardship was also denied. In additional pleas counter claim was lodged, pleading inter-alia, that Chunnilal had earlier let out this shop to one Kashmirilal @ Rs. 500/- per month, which tenant was carrying on business in the name of Arora Medical Store, and after his vacating, it was let out by Chunnilal to the defendant, rent was increased from time to time from 500/- to Rs. 1000/-, which could not be increased, and the defendant is entitled to have the standard rent determined at Rs. 500/- per month. It was also pleaded that no notice was given by the plaintiff about having purchased the shop, nor any demand of rent was ever made, and if the purchase of shop by the plaintiff is established, still the defendant is entitled to have the rent determined, and in this regard court fees was also paid.

The plaintiff filed a reply to the counter claim on 22.5.1996. The plaintiff gave details and explanation about the other premises, pleaded by the defendant to be available to the plaintiff, showing their non availability and/or non suitability. Then, reply to the counter claim was also given, pleading inter-alia that the rent could be increased by consent, and that prevalent market rate is much higher. It was also pleaded, that the plaintiff had given a specific written notice to the defendant. Thus, the counter claim was prayed to be dismissed.

Learned trial court framed nine issues. Issue no. 1 was, as to whether the monthly rent of premises is Rs. 1000/-, issue no. 2 was as to whether the plaintiff has a right to maintain the suit, placing burden on the defendant. Then, issue no.3 is about the defendant having committed default in payment of rent from 1.4.93 to 30.9.1995. Issues no. 4, 5, and 6 relate to the question of reasonable and bonafide necessity, and partial eviction, and comparative hardship. Then, issue no. 7 is about the plaintiff's entitlement to claim arrears of rent amounting to Rs. 33,000/-. The above nine issues were framed on 26.8.97. On 8.12.98 another issue no. 10 was framed, being as to whether the shop in question was purchased by the plaintiff from its owner Saroj in the year 1993, and on that basis, there is relationship of landlord and tenant

between plaintiff and defendant.

During trial the plaintiff examined himself as P.W.1, and also examined her daughter in law as P.W.2, while the defendant himself examined as D.W.1, and produced one Ramesh Kumar as D.W.2, to depose about availability of other accommodation, and to deny the bonafide necessity of the plaintiff. In documentary evidence the plaintiff has produced document of purchase being Ex.-1, which has been held by both the learned courts below to be not admissible in evidence for want of registration and insufficiency of stamp. Then Ex. 2, 3 and 4 have been produced, being copy of the notice signed by Chunnilal to defendant, its postal receipt, and its acknowledgment card, about delivery of notice. Then, Ex. 5, 6, 7 have been produced being copy of the notice sent by the plaintiff to the defendant, asking the defendant to pay the arrears of rent, and vacate the shop, its postal receipt, and acknowledgment card, about its delivery. Then, Ex. 8, 9 and 10, being another notice given by the plaintiff to the defendant appellant, calling him upon to deposit the arrears of rent, and informing about Chunnilal having sold the shop to the plaintiff, its postal receipt and acknowledgment card, about its delivery have been produced. Then, Ex. -11 has been produced being original degree of M.A. granted to the plaintiff's daughter in law, Ex. 12 is the marks-sheet of M.Ed. First Year, Ex. 13 is the original marks-sheet of M.Ed. Second Semester of

plaintiff's daughter in law, and Ex. 14 is the original certificate, about the plaintiff's daughter in law having passed one year diploma course in computer programming, issued by S.D. (P.G.) College, Sriganganagar. The defendant has not produced any documentary evidence.

The learned trial court decided issue no.1 in the manner, that the monthly rent of the premises was Rs. 1000/-. Then issue no. 2 and 10 were decided together. It was held, that the document Ex.-1 is not admissible in evidence, and the notice Ex. 2, 5 and 8 were believed to have been served on the defendant. It was found, that the plaintiff has proved the signatures of Chunnilal, A to B, on Ex.2, on which aspect there is no cross examination, and that, by notice Ex. 5 and 8, the plaintiff has intimated, that he has purchased the premises. Thus these documents are admissible in evidence. It was also held, that in case notice is not received by the defendant, even then the relationship of landlord and tenant was found to exist between the plaintiff and defendant. Then, deciding issue no. 3, the defendant was found to be defaulter, and was given benefit of Section 13(6), being his first default. Deciding issue no. 4, relating to bonafide necessity, it was found, that the plaintiff has another shop adjacent to Khadi Bhandar, has one shop of Anil which is lying vacant, there are shop of National Commercial College, in the name of her husband, on upper storey there are two Chobaras,

which are lying vacant. The family members of the plaintiff being Anil and Sanjeev had sold two shops during pendency of the suit, and that, the plaintiff has admitted, that at the time of Anil selling the shop, opening of the computer coaching centre was lost sight of. Therefore, the requirement of the plaintiff was not found to be bonafide and reasonable. It was also found, that in the residential house the plaintiff has one room, having opening on the road side, which is found to be enough and sufficient. The plaintiff, as per her desire, can use any of these premises for her daughter in law, for carrying on her work. Of course, it was found, that landlord is the best judge of his need. Then the learned trial court found, that considering the circumstances it cannot be said, that the plaintiff has reasonable and bonafide necessity of the premises, and the issue was decided against the plaintiff. Issue no. 5 was decided in favour of the plaintiff, holding that the suit shop cannot be partitioned, and by partition of it nobody's requirement can be satisfied. Then, issue no. 6 about comparative hardship was also decided in favour of the defendant. Issue no. 7 was decided in the manner, holding the plaintiff to be entitled to the amount of rent, mentioned therein. Then, issue no. 8 regarding standard rent had been struck down, as it was not pressed by the defendant on 20.7.2001. Thus, the suit for arrears of rent was decreed, however it was not decreed for eviction.

Aggrieved of this, the plaintiff filed an appeal before the learned lower Appellate Court. The plaintiff challenged the finding of the learned Trial Court on the issue of reasonable and bonafide necessity, and comparative hardship being issues no. 4 and 6. While the defendant, even without filing of cross objection, claimed to support the impugned judgment and decree of the learned trial court, but wanted to challenge the finding on the issues decided against him, and as appears from the judgment, that the defendant challenged the findings only on issues no. 2 and 10, contending that when the document Ex.-1 is not found to be admissible in evidence, it was for the plaintiff to prove the factum of purchase, and unless it is proved, the plaintiff cannot be treated to be landlord. It was also contended, that the plaintiff had not received rent from the tenant, and therefore, also she cannot be termed as landlord. The notice given by Chunnilal was claimed to be baseless, and the notice given by Saroj Kumari was pleaded to be not received, therefore, since no rent has been paid by the defendant to the plaintiff, there is no relationship of landlord and tenant between the parties.

Learned lower Appellate Court took up issue no. 1, and affirmed finding of the learned trial court. Then, findings on issue no. 2 and 10 were also reconsidered by learned lower Appellate Court, and the learned lower

Appellate Court concurred with the finding of the learned trial court, about the document Ex. 1 being not admissible in evidence for want of registration, and stamp duty, and then considered about the plaintiff's right to file the suit, and in that process considered, that the plaintiff has deposed that Chunnilal had given notice to the defendant Ex.2, bearing signatures of Chunnilal A to B, on which she has not been cross examined. Then, he has proved Ex. 3, 4, 5 and 8 informing to have purchased the premises. They were sent on the defendant’s registered address, which address was admitted to be correct, and therefore, it was found, that these notices were served on the defendant. Inter alia with this it was found, that the conclusions arrived at by the learned trial court is perfectly in order, and as no other conclusion is possible. It was found that non payment of rent does hardly matter, and that the defendant was duly intimated, that the property has been transferred to the plaintiff in April, 1993, and thereafter rent was intimated to be payable to the plaintiff, and therefore, the findings on these issues were affirmed. Then, deciding issue no. 3, it was found, that the plaintiff has deposed the money to be outstanding from 1.4.93 to 30.9.95, and nothing has been suggested in the cross examination in this regard, about the rent having been paid, or to be not due. Thus, the finding on issue no. 3 was also confirmed. Then comes the crucial question, which is issue no. 4. It was contended before the learned

lower Appellate Court by the plaintiff, that the learned trial court has committed material error in deciding question of reasonable and bonafide necessity, while the defendant cannot dictate the plaintiff to limit his needs, or carry on particular business in a particular place, the landlord is the best judge of his requirement. It was also contended, that mere fact that the plaintiff's another son Anil Kumar sold away some shop during pendency of the suit, it cannot be said that the requirement is not reasonable and bonafide, and that the learned trial court has assumed the other premises to be vacant, while no other premises for computer work were available, as in the residential accommodation the room is being used as drawing room, and there is no other room in the house to be used as drawing room, and Chobara, which are on the upper storey, are also containing goods of STD PCO, but these aspects have not been considered, and arbitrary discussion has been made. The defendant however supported the findings on this issue. Learned lower Appellate Court found, that the legal proposition, as emerging to have been propounded in the various judgments cited on behalf of the parties is, that the landlord is the best judge of his requirement, court or the tenant cannot dictate the landlord to limit his requirement, or to use, or to limit the requirement in a particular manner, or to carry on the business in particular premises, rather the landlord has been given absolute freedom in this regard. Relying upon this

principle, which in my view, does not suffer from any error, and as a legal proposition, which has not been assailed either, the learned lower Appellate Court proceeded to examine, as to whether the bonafide necessity claimed is reasonable and bonafide, or mere wish or desire, and then, examining the evidence led on the side of the parties in detail, found, that the conclusions arrived at by the learned trial court are not in accordance with the facts, law and evidence produced on record, and are required to be set aside. It was considered, that when the law confers full freedom on the landlord, the plaintiff's evidence was required to be viewed in a positive way, and not in negative way, and not by taking up the evidence, picking it up from here and there. Then, the reasonings given by the learned trial court were considered at page-24 onwards, and were found to be not sustainable. With this, firstly aspect of their requirement was considered, then the aspect of availability of other accommodation, as considered by the learned trial court was considered, and was found to be not sustainable. Then, suitability of other premises, which were shown to be available, and the factum of availability, was also considered, and it was found, that the conclusions arrived at by the learned trial court are unsustainable, and the plaintiff has established her reasonable and bonafide requirement. Thus, the issue was decided in favour of the plaintiff. Then, findings on issue no. 5 were not challenged. Then, issue no. 6, relating to

comparative hardship was also considered, and the findings were reversed. In the result the appeal was allowed, and decree for eviction was also passed, while maintaining the decree for arrears or rent.

Assailing the impugned judgment and decree long drawn arguments were made, inasmuch as the matter was argued on 18.9.2006, 17.10.2006, and lastly on 19.9.2007. On 18.9.2006, the arguments mainly comprised of familiarizing the Court with the facts of the case. Then, on 17.10.2006, it was submitted, that the appellant has filed an application under O. 7 Rule 7, contending that the husband of the plaintiff had died in July 2004. Thus, alternative accommodation has become available to the plaintiff to satisfy the requirement. It was also pleaded, that above the said Bakshi Computer Centre, first floor is also vacant, which the heirs of Ramjidas (husband of the plaintiff) want to let out, for which they have put a sign board. Thus, on account of this subsequent event the requirement stands satisfied, and that, in view of the subsequent events, the decree is liable to be set aside. It was then contended that the notice Ex.-2 has not been proved in accordance with law, more so in accordance with Section 67 of the Evidence Act, as Chunnilal has not been produced to prove his signatures thereon. It was next submitted, that according to Section 109 of the Transfer of Property Act, transferee, in the absence of a contract to

contrary, steps into shoes of the lessor, but then, a legal and valid transfer is a sine qua non for this purpose. Reliance was placed on Full Bench judgment of Allahabad High Court, in Jitan Tamboli Vs. Namko & Ors., reported in AIR 1922 Allahabad 45. It was contended that in the present case the document of transfer, being Ex.-1, has been found by both the learned courts below to be inadmissible in evidence, and there being no other evidence to show any valid transfer of the premises, the plaintiff does not get any right in the property, so as to bring about the relationship of landlord and tenant between the parties. It was contended that the premises were let out to the defendant by Chunnilal, while the land has been claimed to be of Saroj Kumari, but neither of these two have appeared to prove. Then some case law was cited, about the parameters for judging the reasonable and bonafide necessity.

Then, on 19.9.2007 when the matter was again argued full dressed, it was contended, that the definition of landlord includes a person who is entitled to receive the rent, or who collects rent. In the present case the rent was collected by Chunnilal, and Chunnilal has not transferred the premises to the plaintiff, while Saroj Kumari, who is alleged to have transferred the premises, also has not been produced, therefore, the relationship of landlord and tenant was not established. It was in the

alternative submitted, that in view of the fact that the transfer is not established, on account of Ex. 1 being not found admissible in evidence, the notice, at best, may have the effect of rendering the plaintiff to be rent collector, but then the suit for eviction cannot be filed on the ground of reasonable and bonafide necessity of rent collector. It was also contended, that mere giving of notice by Chunnilal, and plaintiff, does not bring about tenancy, as it does not create any lease even under Section 107 of the Transfer of Property Act. The next submission advanced was, that the learned trial court had negatived the reasonable and bonafide necessity, and the learned Appellate Court did not meet the reasons given by the learned trial court. The learned lower Appellate Court has examined the matter over again, as if it were itself the trial court, and arrived at its own conclusion, while that is not the permissible scope of the power of the Appellate Court under Order 41 Rule 31. The learned lower Appellate Court was required to find, as to how the reasonings and the findings of the learned trial court are wrong, and did not have the jurisdiction to interfere with the finding of the trial court, simply because, on the appreciation of the same evidence, the Appellate Court has been able to come to a different conclusion of fact. Reliance in this regard was placed on the judgment of Hon'ble the Supreme Court, in Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., reported in AIR (38) 1951 SC-120, and S.V.R.

Mudaliar & Ors. Vs. Mrs. Rajabu F. Buhari & Ors., reported in AIR 1995 SC-1607. Then it was also argued, that the husband of the plaintiff has died, and therefore, the vacant shop is available, and during pendency of the suit the plaintiff had sold the other shop, therefore, the bonafide necessity does not exist, and in this regard cited the judgment of Hon'ble Supreme Court, in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, reported in 2000(1) Apex Court Journal 142 (S.C.), S.J. Ebenezer Vs. Velayudhan & Ors., reported in 1998(1) Apex Court Journal 142 (S.C.), and in Mohmedrafiz Husenmiya Thakor & Ors. Vs. State of Gujarat, reported in AIR 1997 SC-1520. Then I was taken through the evidence of P.W.1, who has deposed, that the shop was let out by Chunnilal, and Chunnilal had given notice to the defendant, to the effect, that he has sold the rented premises to the plaintiff, while according to the plaint, the premises have been sold by Saroj Kumari, who had not let it out. Interalia with these submissions it was contended, that the appeal involve substantial questions of law, being, as to whether the judgment of the learned lower Appellate Court is contrary to the provisions of Section 96 C.P.C. read with Order 41 Rule 31, Whether the learned courts below were in error in deciding issue no. 2 and 10, and in concluding the existence of relationship of landlord and tenant between the defendant and plaintiff. The other question claimed to be involved was, as to whether the document Ex.-2 is legally proved, and on that basis the

relationship of landlord and tenant can be established. Then, regarding issues no. 4 and 6, question claimed to be involved was, as to whether the judgment and decree of the learned lower Appellate Court having been passed without setting aside the reasons given by the learned trial court, is liable to be set aside. Then, the other question was also contended to be arising, as to whether the suit for eviction can be filed merely on the ground of reasonable and bonafide necessity of the rent collector, and not the title holder of the property.

Learned counsel for the respondent, on the other hand, submitted that the argument of the counsel for the appellant also shows, that the existence of the requirement, its reasonableness, and bonafide, has not been assailed, and the whole argument is concentrated on the aspect of requirement of the plaintiff requiring to be set aside, on the ground of availability of alternative accommodation, while in this regard, in para-5 of the written statement detailed pleadings have been taken, about the alleged other accommodation being of family of the plaintiff, and not of the plaintiff, and the learned counsel took me through the pleadings contained in para-1 of the rejoinder. Then, learned counsel took me to para-2 of page-18 of the judgment, to show, that the considerations taken into account by the learned trial court were extraneous considerations. Then, evidence of the

plaintiff P.W.1 was again read to me, to show, that the plaintiff has clearly deposed about non availability/non-suitability of the suggested other accommodation. Then regarding subsequent events, as pleaded in the application under Order 7 Rule 7 it was submitted, that a reply to that application has been filed, interalia contending, that on the death of the plaintiff's husband the property does not devolve on the daughter in law under Hindu Succession Act. It has also clearly been pleaded therein by the plaintiff, that the said centre now belongs to plaintiff's other son Anil Kumar, who is running it, and the upper story premises is not suitable for the claimed need. In that view of the matter, the alleged subsequent event is of no consequence. Then, regarding relationship of landlord and tenant, learned counsel invited my attention to page-7 of the learned Appellate Court judgment. It was also submitted, that the plaintiff has clearly proved the documents Ex. 1, Ex.2, Ex.5 and Ex.8, and my attention was also invited to the suggestion made on the side of the defendant in cross-examination, about the shop having not been purchased by the plaintiff from Saroj Kumari, this suggestion of course was denied, but then, according to the learned counsel, making of this suggestion shows that the defendant was also of the view, that the plaintiff has purchased the shop from Chunnilal. Then, it was contended that in the eviction suit the ownership of the landlord is foreign element, and cannot be gone into. It was maintained that for maintaining

suit on the ground of reasonable and bonafide necessity, ownership of the plaintiff is not necessary, and this is not the ground raised in the written statement, and therefore, cannot be allowed. Then, learned counsel relied upon the judgments, in Laxman Das Vs. Sultana Ram & Ors., reported in 2005(7) RDD-2452 (Raj.), Akkanissery Govindan Nambiar Vs. Kariyath Raghavan reported in 1998(2) RCR-329, Sarla Ahuja Vs. United India Insurance Company Ltd., reported in 1998(2) RCR-533, Akhileshwar Kumar & Ors. Vs. Mustaqim & Ors., reported in 2003(1) RCR-40, and Smt.Parvatamma Vs. Sampath Kumar reported in 2003(1) RCR-171, so also Dullan Mal alias Dariyanamal Vs. Ram Prasad & Ors., reported in 2003(1) RCR-211, and Sheel Chand Vs. Prakash Chand reported in AIR 1998 SC-3063.

Then in rejoinder, it was submitted, that in the plaint it was pleaded that the plaintiff has pleaded the property in question to be her, and claimed eviction for her daughter in law, pleading it to have been purchased from Saroj Kumari, therefore, the suggestion in cross examination is not relevant. Then, it was contended, that issue no. 10 has been framed, while the property has been purchased from Saroj Kumari, while the defendant was tenant of Chunnilal, and no decree can be passed on the basis of consent.

I have considered the submissions, and have gone

through the record, and the various case law cited at Bar.

Before proceeding to consider the arguments on merit, I may first of all consider the three judgments cited by the learned counsel for the appellant, one being in Jitan Tamboli's case, the other being in Sarju Pershad's case, and S.V.R. Mudaliar's case.

The judgment in Jitan Tamboli's case has been cited on the anvil of Section 109 of Transfer of Property Act. In that view of the matter, I may gainfully quote the provisions of Section 109 which read as under:-

> "109. Rights of lessor's transferee-If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.
>
> Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.
>
> The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased."

Then, coming to the judgment of Allahabad High Court, it has been held therein; "that Section 109 of the Transfer of Property Act which vests in the transferee all the rights of the transferor assumes of course a valid transfer". This is a precise observation, on which much stress has been led by the learned counsel for the appellant. Of course, it has been observed so by the Full Bench. However, in that case the decree for eviction was maintained. Considering the provisions of Section 109, I am not able to subscribe to the same view.

At the outset it may be observed, that law is required to be interpreted in a purposive manner, and in a manner to advance the cause of justice, and not in a manner which may foment litigation, or create complications, and thwart cause of justice.

In this background, a look at the provisions of Section 109 shows, that it only enacts, and makes provisions about consequence, in the event of lessor transferring the property leased or any part thereof or any part of his interest therein. There is nothing in the Section to provide, as to how such transfer is to be affected by the lessor. In this sequence a look at the provisions of Section 107 of the Transfer of Property Act shows, that according to that provision, any lease other

than for a term exceeding one year, or reserving an yearly rent, can be made even by agreement accompanied by delivery of possession, and it is not contemplated in the Section, that agreement should be in writing, and there are cases and cases, to the effect, that even oral tenancy can be created, by transfer of possession and acceptance of relationship of landlord and tenant, and/or on payment of rent. Then a look at Section 105 of the Transfer of Property Act shows, that it defines the lease as a transfer of right to enjoy the property. Obviously if the things are to be read in conjunction with The Registration Act and Stamp Act, the lease could possibly not be without a written document. In that view of the matter, when lease can be by even an oral agreement, it is too much to insist upon proof of a valid legal transfer of title of the lessor, in favour of the transferee, by a valid registered instrument. Then again a reading of Section 105 shows, that lease can be granted, not necessarily by the owner of the property, and can be granted by anybody who simply has a right to transfer the right to enjoy such property, and in that event, the person granting lease is called the lessor, and the grantee is called the lessee. Thus, the lessor is always not necessary to be the owner of the property, and even if the lessor is not the owner of the property, his position would not be reduced to that of the Rent Collector only.

Yet another aspect of the matter is, that there may be cases and cases, where a valid legal transfer of title of the leased property may, somehow or someway or even by undertaking a hair spinning exercise, found to be lacking somewhere, or in some hyper-technicalities, notwithstanding the fact, that transferor and the transferee are ad idem, to the effect, that the property stands transferred to the transferee. Likewise, there may be cases where even without any document the property may be transferred by delivery of possession, even symbolic possession, and the transferor may direct the lessee to go on paying the rent to the transferee, and thereby the transferee may start holding possession of the property as an owner (symbolic possession), and that possession may continue for the requisite period of time, contemplated by Article 64 and 65 of the Limitation Act, and thereby the original owner may lose his right, title or interest, in the property and by operation of law, the transferee may perfect his title. Needless to say that such perfection of title is not always necessary to be got adjudicated in an appropriate litigation, i.e. by getting a seal of the Court thereon. The perfection is by operation of law. Likewise, there may be any number of eventualities, and in any of such eventuality, the tenant cannot be armed with a weaponry to enjoy complete holiday in payment of rent, or in discharge of his liabilities as a lessee, obviously because the transferor would not enforce them, and if the

principle propounded in Jitan Tamboli's case is followed, the transferee also cannot enforce. Thus, either the lessee enjoys the property, or the property remains in medio, which is not the contemplation of Section 109 read with Section 105 and 107 of the Transfer of Property Act. The present is a typical case where the property belonged to the wife, and as is not uncommon, that despite property standing in the name of wife, the husband must have been dealing with the property, and must have inducted the appellant as a tenant, obviously thereby the husband did not become the owner, and the husband's inducting the appellant as a tenant, did not in any manner fatter the proprietary right, or ownership right, vesting in the wife. In such circumstances, to invoke the principle propounded in Jitan Tamboli's case, taking shelter under Section 109 of the Transfer of Property Act, cannot be sustained. Admittedly, the transferor, or her husband, is not claiming rent, on the other hand, the defendant has pleaded in the written statement that the plaintiff did never demand the rent. Before using the word “admittedly”, I am aware of the fact, that the defendant has deposed, that he is paying rent to Chhunilal, yet I have used the word “admittedly”, because Chhunilal or Saroj Kumari have not been produced on the side of the appellant, to show, that they are continuing to receive rent from the appellant, and/or are continuing to treat him as tenant; then determination under Section 13(3) of the Rajasthan Premises (Control of Rent

and Eviction) Act, hereafter to be referred to as the Act, had been made, and appellant had deposited the rent, and had been depositing continuously; and then while deciding issue No.3, the appellant had been found to be defaulter in payment of rent, and has been given the benefit of Section 13(6) of the Act. This finding has not been challenged by the appellant, before the learned lower appellate Court, though he had challenged the finding on issue No.2 and 10, even without filing cross-objections. The learned trial Court held the plaintiff respondent entitled to arrears of rent from the appellant from 1.4.93 onwards, and even that part of the judgment and decree of the learned trial Court had also not been challenged by the appellant before the learned lower appellate court, and during all this long drawn arguments, even before me, it has not been challenged. In that view of the matter, I do not find myself wrong in using the word “admittedly”. Thus, when the transferor i.e. Saroj Kumari and/or Chhunilal are not claiming rent from the appellant, and the plaintiff is not only claiming the rent, rather it has been decreed in her favour, which decree is not under challenge, it cannot be said, that the appellant is entitled to draw any benefit from provisions of Section 109 of the Transfer of Property Act. There is yet another significant circumstance on record, comprised in the pleadings taken in various paras of the written-statement, wherein he has clearly and repeatedly pleaded, that the plaintiff never demanded rent

from him, nor gave any notice. Then as D.W.1 he has clearly deposed, that the fact of plaintiff being owner came to his knowledge, by the present suit. Further significantly it had never been the stand of the defendant, that on account of document Ex.-1 being not admissible in evidence, being not registered, he is not liable to pay rent to the plaintiff, or to suffer eviction on the hand of the plaintiff. Likewise entire tenor of the written-statement, if comprehensively read, leaves no manner of doubt that the appellant had clearly taken a stand about plaintiff owning various other properties also, and/or the premises being not required for the daughter in law, or the like. In such circumstances, if the matter is comprehensively considered on the above parameters, the contention raised on the anvil of Section 109, to assail the finding of the learned Courts below, on issue No.2 and 10, cannot be accepted.

Now I take up the other two judgments, in Sarju Prashad's and S.V.R. Mudaliar's cases. In Sarju Prashad's case, the question for consideration was one of the fact, decision of which was depended on oral evidence, and it was held that in such case, the appellate Court has got to bear in mind, that it has not the advantage, which the trial Judge had, in having the witnesses before him, and of observing the manner in which they deposed in Court. At the same time, it was further held in the same para 7, that this certainly does not mean that when an appeal lies on

facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. It was held that the rule is nothing more than a rule of practice, and when there is conflict of oral evidence of the parties on any matter in issue, and the decision hinges upon the credibility of witnesses, then, unless there is some special feature about the evidence of a particular witness, which has escaped the trial Judge's notice, or there is a sufficient balance of improbability to displace his opinion, as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.

It may be noticed here, that in that case the facts involved were about the proof of mortgage deed, and the evidence, as discussed, showed, that there was evidence of the petition-writer, who had attested the deed, and it was found that mortgagor did not come to the place, and his signatures were already there on the deed, when the witnesses signed it. Significantly the important witness being the only surviving witness, who was called on behalf of the plaintiff, deposed to have signed the document as a witness, was declared hostile also, and he was allowed to be cross-examined by both the parties. This witness is a petition-writer. The other witnesses had already died. In such circumstances, the precise question was of ascertaining the credibility of the particular witness

only, and in this background this principle was kept in mind, but then, as it was further observed by Hon'ble the Supreme Court itself, that it is only a rule of practice, which is sought to be pressed into service by the learned counsel for the appellant, as rule of law, but it has not been so held by Hon'ble the Supreme Court.

Then it is also significant to note, that as appears from the record, that the statements of Saroj Kumari were not recorded by the learned trial Court, but have been recorded by the Commissioner Shri Shiv Narayan Bishnoi, advocate. Obviously, therefore, even for the purpose of judgment in Sarju Prashad's case, it cannot be said, that the learned trial Court had the advantage of having the witness before him, and of observing the manner in which the deposition was made.

So far S.V.R. Mudaliar's case is concerned, the principle propounded therein is, that before reversing the finding of fact, appellate Court has to bear in mind the reasons described by the trial Court, and that it should come to close quarters with the judgment, which it reviews, it should discuss or even allude to the reasonings of the subordinate Judge. This principle of law is not in dispute. The question then would be, as to whether the learned appellate Court has followed this principle or not.

Thus, after discussing the judgments, on the two aspects, in my view, in view of the above discussion, the findings recorded by the learned Courts below, on issues No.2 and 10 do not require any interference in my second appellate jurisdiction.

Then remains the only question as to whether the learned lower appellate Court has reversed the finding of the learned trial Court on issue No.4, on the question of reasonable and bonafide necessity, in violation of the principles propounded in S.V.R. Mudaliar's case, and/or that the finding recorded on issues No.4 and 6 require any interference in my second appellate jurisdiction.

Even at the cost of repetition, it may be recapitulated, that the thrust of the argument, so far as S.V.R. Mudaliar's case is concerned, is, that the learned appellate Court has simply catalogued the evidence and has re-appreciated it afresh, and simply because it came to a different conclusion on re-appreciation of that evidence by itself, without meeting the reasonings of the learned trial Court, has set aside the judgment. Learned counsel read to me, that the learned appellate Court had framed the legal proposition at page 19, and then proceeded to frame the question, as to whether the necessity alleged is reasonable or bonafide, or not, or is a mere wish, and then has proceeded to discuss the evidence of the parties. In my

view, that is not all. The learned lower appellate Court, being the final court of fact, was required to reappreciate the evidence, and as would be clear from reading of page 23 onwards, that the learned lower appellate Court has found, that the reasons given by the trial Court, to deny the reasonable and bonafide necessity, in view of other properties, are conclusions, which are not in accordance with facts, law, and evidence produced on record. Thus, the learned lower appellate Court, after re-appreciating the evidence, has simply not arrived at a different conclusion; but has found, that the conclusions arrived at by the learned trial court, are not correct on facts, law, and are, not in accordance with the evidence on record. Then at page 24 it has further been held that it is the landlord's choice of premises, and the evidence of the landlord is required to be looked into with a positive approach, and from page 24 onwards, the learned lower appellate Court has considered individual reasoning given by the learned trial Court, and it has given its own reasons, to show, as to how those reasonings, given by the learned trial Court, are not correct, and after undertaking this exercise, running into good long about 4 pages, has concluded at page 27, that the conclusions arrived at by the learned trial Court, on the issue is required to be set aside. Thus, to say the least, the principle in S.V.R. Mudaliar's case has been completely followed by the learned lower appellate Court, in its letter and spirit.

Then, at the same time, since arguments were submitted on the merits of the findings about the reasonable and bonafide requirement, and various case law has been cited on either side, I may first of all refer to the judgment, in Shiv Sarup Gupta's case, cited by the learned counsel for the appellant, therein in para 12 Hon'ble the Supreme Court has held as under:-

> "...A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence of pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself- whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence of pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the

> accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or two conservative or pedantic must be guarded against."

Then in Akhileshwar Kumar's case again, in para 4 has held as under:

> "...Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy..."

In that view of the matter, the other judgments cited on either side need not detain me.

Essentially, the question of reasonable and bonafide necessity, is a question of fact, and as submitted by the learned counsel for the respondent, that the whole thrust of the argument, on the side of the learned counsel for the appellant is, on the basis of availability of alternative accommodation to the landlord. Thus, the fact, that the plaintiff has a requirement for her daughter in law for establishing the business, need not detain me. Then

this requirement is mere whim, or rests in the realm of desire of the plaintiff, also need not detain me, as this is not the contention, or even submission, during course of argument, that the requirement is in any manner obliquely motivated. In that view of the matter, existence of the requirement, and its bonafide, need not detain me.

The question then is only about its reasonableness, and the reasonableness is required to be considered only on the anvil of availability of other alternative accommodation.

The learned lower appellate court has considered the evidence in this regard, led on behalf of both the parties, threadbare, and after considering the reasonings given by the learned trial Court, has found that finding to be not correct on facts, law, and to be not in accordance with the evidence, and after considering all alternative accommodation, suggested by the defendant appellant, has found reasonable and bonafide necessity of the plaintiff. It is not shown on the side of the appellant, that the finding is an outcome of any misreading or nonreading or misconstruction of any evidence or material on record. And therefore this finding does not require any interference in my second appellate jurisdiction, by re-appreciating the evidence.

Then I take up the contention about the subsequent events, about which application under Order 7 Rule 7 had been filed. It is not in dispute, that Ramjidass has expired, and according to the appellant, the plaintiff's daughter in law is looking after the business, and that, on the upper storey thereof, there is apartment available, which is desired to be let out, while according to the plaintiff, a reply to the application has been filed, and it is contended therein that, that business is being run by Anil Kumar, the younger son of the plaintiff as a sole owner, and that Anil Kumar was working with his father, during his father's lifetime, and the daughter in law Vinod Kumari has nothing to do with the said Bakshi Computer Centre. Then regarding construction of upper storey, it has been pleaded, that the premises are situated in the residential area, while the suit shop is situated in famous and busiest commercial area, being Ravindra Path, and is suitable and profitable. Another thing that transpires on record is, that according to para 5 (ख) of the plaint, the requirement of the plaintiff is, that her daughter in law Vinod Kumari wants to start a computer coaching class, and even in the evidence, the plaintiff has deposed that her daughter in law is to open a computer coaching centre, while the business being run by the husband of the plaintiff, is not shown to be of computer coaching, rather as appears from the photograph, produced with the application under Order 7 Rule 7, that Bakshi Computer

Centre has been transacting the business, about photostat, colour photostat, computer job work, spiral binding, comb binding, fax, lamination, bank loan forms, printing press and courier. It is required to be comprehended, that nature of this business, as appears from the photograph, which was being transacted in the Bakshi Computer Centre, and the requirement of setting up the computer coaching centre, are entirely of different nature. In that view of the matter, in my view, the alleged subsequent event also does not bring the reasonable and bonafide necessity to an end.

So far the finding on issue No.6 is concerned, no argument was advanced, as to how the findings on issue No.6, as recorded by the learned lower appellate Court, requires interference. A perusal of the findings recorded by the learned lower appellate Court does show, that the plaintiff does not have any other alternative accommodation, where she can carry on her business, and the comparative hardship lies in favour of the plaintiff. This is also a finding of fact, and is not vitiated on any of the grounds available under Section 100 CPC.

The last oral submission was also made, at the conclusion of the arguments, that may be, that upper storey premises being Bakshi Computer Centre are not suitable for the plaintiff, but then the defendant is prepared to exchange the suit premises with that premises. Suffice it

to say, that that is the matter, which the parties can negotiate between themselves, but then, that cannot be said to be giving rise to any substantial question of law, so as to entitle me to entertain the second appeal, on that ground.

Thus, the appeal does not involve any substantial question of law, and the same is therefore dismissed summarily.

At this stage, the learned counsel for the appellant prayed for being granted reasonable time to vacate the premises, and submitted, that two years time may be granted. I have considered the submissions, and find, that impugned judgment and decree of the learned lower Appellate Court is of 21.3.2005, and by now more than 2 ½ years have already passed, which obviously have been enjoyed by the appellant. However, I think it would be in the interest of justice, that the appellant is granted some further reasonable time. Accordingly, the appellant is granted time to vacate the suit premises, on or before 31.12.2008, subject to the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer

the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today, and shall further continue to deposit amount, equal to the monthly rent, by way of damages for use and occupation, by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/